Paper No. 12
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THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB APRIL 15, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Timothy C. Bonerb

Serial No. 75/151,207

Phillip E. Decker for Timothy C. Bonerb.

Barbara A. Gaynor, Trademark Examining Attorney, Law Office 104 (Sidney I. Moskowitz, Managing Attorney).

Before Quinn, Hairston and Wendel, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An intent-to-use application has been filed by Timothy C. Bonerb to register the mark TUCKERMAN for "non-metallic inflatable bladders used for removing ice and snow from roofs and attached structures."[1]

Registration has been finally refused under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(4), on the

ground that the mark is primarily merely a surname. Applicant has appealed. Briefs have been filed, but no oral hearing was requested.

In support of the refusal to register, the Examining Attorney made of record a printout retrieved from the PHONEDISC U.S.A. database (1996 ed.) which shows listings for 203 individuals having the surname "Tuckerman." In addition, the Examining Attorney made of record excerpts of thirty stories retrieved from the NEXIS database which make mention of individuals with the surname "Tuckerman."[2] Also, the Examining Attorney submitted a page from Webster's II New Riverside University Dictionary (1994 ed.) which shows no entry for "Tuckerman" and an excerpt from American Surnames (1969) which lists "Tuckerman" as a surname and indicates that the surname originates from an occupation.

Applicant, on the other hand, contends that the primary significance of Tuckerman is not as a surname, but rather as a geographic location. In particular, applicant states that "Tuckerman" refers to Tuckerman Ravine in New Hampshire, a place known for its skiing and hiking, and that the mark TUCKERMAN, as used in connection with

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[1] Application Serial No. 75/151,207 filed August 16, 1996 under Section 1(b) of the Trademark Act, based on applicant's allegation of a bona fide intent to use the mark in commerce.

[2] It appears that the Examining Attorney's search revealed over two hundred stories of which she submitted a representative sample.

applicant's services, is suggestive of the ice and snow applicant removes from roofs. In support of its position, applicant submitted an excerpt from the AMC White Mountain Guide which indicates that Tuckerman Ravine is a ski area in the Mt. Washington area of New Hampshire. Also, applicant submitted the results of an Internet search of web sites which include the word "Tuckerman." The ten "top hits" included eight web sites which concerned the Tuckerman Ravine ski area. Applicant maintains that the search results from the Internet are more representative of the significance of "Tuckerman" than the NEXIS search because the Internet reaches more people.[3]

Whether a mark is primarily merely a surname depends upon whether its primary significance to the purchasing public is that of a surname. In re Hutchinson Technology, Inc., 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988). The Office has the burden of establishing prima facie that a

[3] We note that the Examining Attorney has raised an issue as to whether information obtained from the Internet is admissible. In particular, she contrasts the content of a web site, which can be changed on a daily basis, with articles appearing in the NEXIS database, which have been published in hard form in newspapers, journals, and the like. The Board has taken the position that information obtained from the Internet is admissible, but must be evaluated for its probative weight. See Raccioppi v. Apogee Inc., 47 USPQ2d 1368, 1371 (TTAB 1998). Also, inasmuch as the evidence herein was timely made of record and is accompanied by information as to what search engines were used and the category of the search, we see no reason to exclude the evidence from consideration.

term is primarily merely a surname. In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). Provided that the Examining Attorney establishes a prima facie case, the burden shifts to the applicant to rebut the showing made by the Examining Attorney. See In re Harris-Intertype Corp., 518 F.2d 629, 186 USPQ 238, 239-40 (CCPA 1975).

In this case, the PHONEDISC U.S.A. and NEXIS evidence, along with the excerpt from American Surnames are sufficient to establish a prima facie case that TUCKERMAN is primarily merely a surname. As noted by the Examining Attorney, the information in the NEXIS database is taken from widely disseminated printed publications such as newspapers, magazines and journals, and, thus is probative of the significance of "Tuckerman."

With respect to applicant's evidence that TUCKERMAN has significance as the name of an area in New Hampshire, we find this use to be somewhat obscure. Applicant itself acknowledged as much in its May 14, 1997 response to the Examining Attorney's Office action:

> Unlike FAIRBANKS, TUCKERMAN is not a well-known term to the American public. To most Americans, the reference is likely to be so remote or obscure as to be inherently distinctive when applied to the Applicant's goods, such that the purchasing public

> would not associate the place as being the geographic origin of the goods.

In any event, we do not believe that the other meaning of TUCKERMAN is sufficient to take it out of the "primarily merely a surname" category.

Finally, we should add that we agree with the Examining Attorney that TUCKERMAN looks and sounds like a surname.

Decision: The refusal to register is affirmed.

T. J. Quinn

P. T. Hairston

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial and
Appeal Board